



07-CV-01925-CMP

FILED
LODGED
ENTERED
RECEIVED

DEC 04 2007

LK

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHIRLEY SCHEIER, an individual,
Plaintiff,

v.

CITY OF SNOHOMISH, a municipal
corporation, and DARLENE GIBSON,
CHUCK MACKLIN, and ALEXANDER
ROSS, all individuals,

Defendants.

No.

C07-1925 MTB

NOTICE OF REMOVAL

(FROM SNOHOMISH COUNTY
SUPERIOR COURT, SNOHOMISH
COUNTY CAUSE NO. 07-2-08715-8)

(CLERK'S ACTION REQUIRED)

TO: UNITED STATES DISTRICT COURT CLERK
WESTERN DISTRICT AT SEATTLE

COME NOW Defendants City of Snohomish, Darlene Gibson, Chuck Macklin and
Alexander Ross by and through their attorneys of record, and pursuant to 28 U.S.C. §§
1441 and 1446 hereby request that this matter be removed to Federal Court.

This matter is subject to removal because Plaintiff has alleged, inter alia, that
Defendants have violated Plaintiff's rights secured by the Constitution and/or laws of the
United States in this civil action. To wit, the Plaintiff is attempting to allege a cause of
action pursuant to Title 42 U.S.C. §1983, and requests compensatory damages and an
award of reasonable attorneys' fees pursuant to 42 U.S.C. §1988. See Plaintiff's
"Complaint" at ¶¶ 23 attached hereto and incorporated herein by reference.

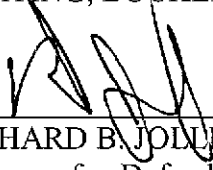
1 Thus, Plaintiff's Complaint alleges claims based on the Constitution and/or laws of
2 the United States and this Court has original jurisdiction in light of said claims pursuant to
3 28 U.S.C. § 1331.

4 Plaintiff's subject lawsuit was filed in Snohomish County Superior Court on or
5 about November 15, 2007. Defendants City of Snohomish, Darlene Gibson, Chuck
6 Macklin and Alexander Ross received notice of the suit on November 28, 2007.

7 Therefore, this matter is subject to removal to this District Court as the Plaintiff
8 herein has filed a suit in a County Superior Court embraced by this District Court and
9 Plaintiff therein has alleged claims arising under the Constitution and/or laws of the United
10 States in this civil action.
11

12 Respectfully submitted this 3rd day of December, 2007.

13 KEATING, BUCKLIN & MCCORMACK, INC., P.S.

14 
15 _____
16 RICHARD B. JOLLEY, WSBA #23473
17 Attorney for Defendants City of City of Snohomish,
18 Darlene Gibson, Chuck Macklin and Alexander Ross
19
20
21
22
23
24
25
26
27

DECLARATION OF SERVICE

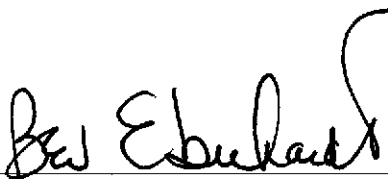
I, Beverly Eberhardt, hereby declare under penalty of perjury of the laws of the State of Washington that I am of legal age and not a party to this action; that on the 3rd day of December, 2007, I caused a copy of Defendant City of Snohomish, et al's Notice of Removal to be

☐ faxed; and/or
☐ mailed via U.S. Mail, postage pre-paid; and/or
☒ sent via ABC Legal Messengers, Inc.

from Seattle, Washington, addressed as follows:

Aaron H. Caplan
ACLU
705 2nd Ave., Ste 300
Seattle, WA 98104

Venkat Balasubramani
Balasubramani Law
8426 40th Ave SW
Seattle, WA 98136


Beverly Eberhardt

FILED

NOV 15 2007

PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASHTHE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

SHIRLEY SCHEIER, an individual,

Plaintiff,

v.

CITY OF SNOHOMISH, a municipal
corporation, and DARLENE GIBSON,
CHUCK MACKLIN, and ALEXANDER
ROSS, all individuals,

Defendants.

No. 07 2 08715 8

COMPLAINT

1. This Complaint arises out of the unlawful detention and arrest of Shirley Scheier by City of Snohomish police officers, without reasonable suspicion or probable cause, during the lawful exercise of First Amendment rights by Scheier.

COMPLAINT - 1

AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON FOUNDATION
705 Second Avenue, Suite 300
Seattle, Washington 98104-1799
(206) 624-2184

ORIGINAL

PARTIES

2. Plaintiff Shirley Scheier ("***Scheier***") is a natural person who resides in Seattle, Washington.

3. Defendants Darlene Gibson, Chuck Macklin, and Alexander Ross (the "***Officers***") are City of Snohomish Police Officers. At all times, their actions alleged in the Complaint were taken during the course of their employment by the City of Snohomish and under color of state law as that term is used in 42 U.S.C. § 1983. The Officers are being sued in their individual and official capacities.

4. The City of Snohomish (the "***City***") is a municipal entity doing business in the State of Washington. The actions of the Officers were undertaken pursuant to municipal policies of the City.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this Court because the incidents complained of occurred in Snohomish County, RCW 4.12.020, and because one or more of the defendants resides in Snohomish County, RCW 4.12.025.

FACTUAL ALLEGATIONS

6. Scheier is an artist and Professor at the University of Washington School of Art. Scheier incorporates photography into her work. Her recent work

1 explores the relationship between humans and their environment, especially in the
2 context of industrialization. Consequently, she often photographs power lines, power
3 stations, and other public utility infrastructure. She is careful not to trespass while
4 taking photographs, and obey all applicable laws while doing so.
5

6
7 7. On October 17, 2005, Scheier drove from her home to the City of
8 Snohomish in order to take photos of power lines near the Snohomish Substation of
9 the Bonneville Power Administration ("**BPA**"). She took approximately seventeen
10 photographs of the power lines and towers holding them. Her photos were taken
11 from different vantage points that are accessible to the public.
12

13
14 8. All of her photographs were taken on land accessible to the public,
15 including from city streets and rights-of-way. Scheier saw no signs prohibiting cars
16 or pedestrians in those areas, or any signs forbidding photography.
17

18 9. As she was driving home, Scheier was pulled over by one of the
19 Officers.
20

21 10. Though Scheier assumed she had been pulled over for a minor traffic
22 violation, it quickly became apparent that was not the case. Two other Officers
23 joined the first officer on the scene, questioned Scheier vigorously about why she was
24 taking photos, and demanded to see the photos she had taken.
25
26

1 11. During the questioning, the Officers demanded she exit her car. The
2 Officers handcuffed her and patted her down, treating her roughly in the process.
3

4 12. The Officers then detained her in one of the police vehicles while they
5 searched her car. A shaken Scheier was released after having been in custody
6 approximately one hour. She was told that the FBI would be investigating and
7 contacting her, although there has been no follow-up inquiry by the FBI.
8

9 13. Scheier notified her Senator of the incident, who requested information
10 from the City.
11

12 14. The City maintained that the Officers had acted reasonably under the
13 circumstances. In a letter to Senator Maria Cantwell dated December 8, 2005, the
14 City acknowledged that the actions of the Officers were triggered because Scheier
15 was "taking photographs of the facility." The City further maintained that "[these]
16 suspicious facts . . . clearly justified the brief detention and actions taken . . ."
17
18

19 15. The City thus ratified the actions of the Officers and proclaimed its
20 municipal policy that taking photographs of public infrastructure such as power
21 plants from public property is suspicious behavior which justifies detention and
22 arrest.
23

24 16. This incident had a variety of negative consequences for Professor
25 Scheier. She lost, and continues to lose, sleep, and suffered other signs of stress and
26

1 nervousness following the incident. Equally important, she became reluctant to
2 engage in photography and her art, for fear of suffering the same fate again.
3

4 **FIRST CAUSE OF ACTION: TORTIOUS CONDUCT**

5
6 17. Defendants' conduct constituted the state law torts of negligence,
7 invasion of privacy, and false arrest.

8
9 18. The City is responsible in tort for the actions of the Officers under the
10 doctrine of *respondeat superior*.

11 19. Scheier complied with state tort claim procedures by submitting a claim
12 on August 31, 2007, which was rejected in a letter dated September 24, 2007. This
13 action was filed more than sixty days after presentation of the claim.
14

15
16 **SECOND CAUSE OF ACTION: FOURTH AMENDMENT (§ 1983)**

17 20. Defendants unreasonably seized and searched plaintiff and her car
18 without reasonable suspicion or probable cause to believe that plaintiff had been or
19 was about to be committing a crime.
20

21 21. Following plaintiff's initial detention, Defendants unjustifiably
22 prolonged the seizure and used excessive force by handcuffing her and placing her in
23 the back of the police car.
24
25
26

1 22. Defendants' conduct infringed on plaintiff's right to be free from
2 unreasonable searches and seizures in violation of the Fourth and Fourteenth
3 Amendments to the United States Constitution.
4

5 23. Defendants' actions taken under color of state law violated plaintiff's
6 federal rights under 42 U.S.C. § 1983.
7

8 **THIRD CAUSE OF ACTION: FIRST AMENDMENT (§ 1983)**
9

10 24. In taking the photographs described above, plaintiff was engaged in
11 expressive activity protected under the First Amendment to the United States
12 Constitution.
13

14 25. Defendants took action against plaintiff substantially motivated by her
15 exercise of her free speech rights.
16

17 26. Defendants' conduct infringed on plaintiff's rights under the First and
18 Fourteenth Amendments to the United States Constitution.
19

20 27. Defendants' actions taken under color of state law violated plaintiff's
21 federal rights under 42 U.S.C. § 1983.
22
23
24
25
26

RELIEF REQUESTED

Plaintiff seeks the following relief:

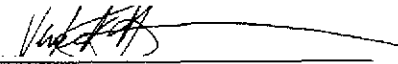
- A. Monetary damages against all defendants in an amount to be determined at trial;
- B. Costs and reasonable attorney fees pursuant to 42 U.S.C. § 1988 or any other applicable law; and
- C. Such other and further relief as the Court deems just and proper.

DATED this 15th day of November, 2007.

AMERICAN CIVIL LIBERTIES
UNION OF WASHINGTON
FOUNDATION

By: Aaron H. Caplan,
WSBA #22525

BALASUBRAMANI LAW

By: 
Venkat Balasubramani
WSBA #28269